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Perbadanan Pengurusan PD1 v SCP Assets Sdn Bhd

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(NCVC)(W)-2002–11 OF 2023
NANTHA BALAN, LIM CHONG FONG AND AHMAD KAMAL JJCA
2 JULY 2025

C *Land Law — Strata titles — Management corporation — Maintenance charges — Respondent commenced suit against appellant challenging legality of different rates of maintenance charges imposed — High Court allowed claim — Whether appellant lawfully implemented and imposed different rates of maintenance charges*

D A commercial development project known as Pusat Dagangan Phileo Damansara 1 ('PD1 complex') was developed by AAB Damansara Sdn Bhd ('the developer'). The PD1 complex comprised seven blocks containing 72 ground floor shop parcels and 551 upper floor office parcels, one block of a seven-storey office tower ('Bangunan Yin'), surface car park bays at ground level, and three levels of basement car park bays located beneath the seven blocks and Bangunan Yin. By a sale and purchase agreement, the developer sold the basement car park bays of the seven blocks to PD1 Corporate Parking Sdn Bhd ('PD1 Corporate Parking'). Further, by a supplemental sale and purchase agreement, the developer sold the ground floor surface car park bays of the seven blocks to PD1 Corporate Parking. Additionally, by another sale and purchase agreement, the developer and Intershine Sdn Bhd sold the basement car park bays of Bangunan Yin to PD1 Corporate Parking. Subsequently, pursuant to a corporate restructuring exercise, the respondent acquired all the car park bays from PD1 Corporate Parking. Upon the establishment of the appellant who was a management corporation constituted pursuant to the Strata Titles Act 1985 ('the STA') and the convening of its first annual general meeting, the appellant following a vote by way of private motion, implemented and imposed different rates of maintenance charges from those previously imposed by the developer. As a result, the respondent commenced High Court suit against the appellant. The respondent primarily contended that the vote poll conducted by the appellant was unlawful as it was in contravention of the STA as well as the Strata Management Act 2013 because the rates of maintenance charges had been established and approved by the relevant statutory authority. The High Court allowed the respondent's claim and hence, this appeal by the appellant.

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Held, dismissing the appeal:

(1) The computation of the variable rates ('the computation') using the direct cost allocation methodology was hypothetical as well as arbitrary. This had been done principally based on the differences in size of the office, shop and carpark parcels in the PD1 complex. The computation had not however been cogently done based on the actual maintenance costs of the common property reasonably required by the office, shop and carpark parcels respectively for their differing usage over the preceding years. The appellant's computation was a collateral attempt by the appellant to redress the inequities of the share units that had been allocated by the Director of Lands and Mines of Selangor in respect of the PD1 complex. This collateral nature of the appellant's defence to the respondent's action was unsustainable. The circumstances could not warrant the issuance of an order for the re-allocation of the share units for the carpark parcels particularly because the Director of Lands and Mines of Selangor ought to be but was not given the right to be heard. In the premises, there was no appealable error on the part of the High Court judge that justified appellate intervention (see paras 38–40 & 42–43).

[Bahasa Malaysia summary

Satu projek pembangunan komersial yang dikenali sebagai Pusat Dagangan Phileo Damansara 1 ('kompleks PD1') telah dibangunkan oleh AAB Damansara Sdn Bhd ('pemaju'). Kompleks PD1 terdiri daripada tujuh blok yang mengandungi 72 petak kedai di tingkat bawah dan 551 petak pejabat di tingkat atas, sebuah blok menara pejabat tujuh tingkat ('Bangunan Yin'), ruang letak kereta permukaan di tingkat bawah, dan tiga tingkat ruang letak kereta bawah tanah yang terletak di bawah tujuh blok dan Bangunan Yin. Melalui satu perjanjian jual beli, pembangun telah menjual ruang letak kereta bawah tanah bagi tujuh blok kepada PD1 Corporate Parking Sdn Bhd ('PD1 Corporate Parking'). Selanjutnya, melalui satu perjanjian jual beli tambahan, pembangun telah menjual ruang letak kereta permukaan di tingkat bawah bagi tujuh blok kepada PD1 Corporate Parking. Tambahan lagi, melalui satu perjanjian jual beli lain, pembangun dan Intershine Sdn Bhd telah menjual ruang letak kereta bawah tanah Bangunan Yin kepada PD1 Corporate Parking. Kemudian, menurut pelaksanaan penstrukturan semula korporat, responden telah memperoleh kesemua ruang letak kereta daripada PD1 Corporate Parking. Selepas penubuhan perayu yang merupakan sebuah perbadanan pengurusan yang ditubuhkan menurut Akta Hakmilik Strata 1985 ('AHS') dan mengadakan mesyuarat agung tahunan pertamanya, perayu berikutan undian melalui usul persendirian, telah melaksanakan dan mengenakan kadar caj penyelenggaraan yang berbeza daripada yang dikenakan sebelum ini oleh pembangun. Akibatnya, responden telah memulakan tindakan di Mahkamah Tinggi terhadap perayu. Responden pada asasnya berhujah bahawa pungutan undi yang dijalankan oleh perayu adalah menyalahi undang-undang kerana ia bertentangan dengan AHS serta Akta Pengurusan Strata 2013 kerana kadar caj penyelenggaraan telah ditetapkan dan diluluskan oleh pihak berkuasa

berkanun yang berkaitan. Mahkamah Tinggi membenarkan tuntutan responden dan oleh itu, rayuan ini oleh perayu.

Diputuskan, menolak rayuan:

(1) Pengiraan kadar berubah-ubah ('pengiraan') menggunakan metodologi peruntukan kos langsung adalah bersifat hipotetikal serta arbitrari. Ini telah dilakukan terutamanya berdasarkan perbezaan saiz petak-petak pejabat, kedai, dan tempat letak kereta di dalam kompleks PD1. Walau bagaimanapun, pengiraan tersebut tidak dilakukan secara teliti berdasarkan kos penyelenggaraan sebenar harta bersama yang diperlukan secara munasabah oleh petak-petak pejabat, kedai, dan tempat letak kereta masing-masing, bagi penggunaan yang berbeza sepanjang tahun-tahun sebelumnya. Pengiraan perayu merupakan percubaan kolateral oleh perayu untuk membetulkan ketidakadilan unit syer yang telah diperuntukkan oleh Pengarah Tanah dan Galian Selangor berhubung dengan kompleks PD1. Sifat kolateral pembelaan perayu terhadap tindakan responden adalah tidak dapat dipertahankan. Keadaan tersebut tidak mewajarkan pengeluaran perintah untuk peruntukan semula unit syer bagi petak-petak tempat letak kereta khususnya kerana Pengarah Tanah dan Galian Selangor sepatutnya didengar tetapi tidak diberikan hak untuk didengar. Oleh yang demikian, tiada kesilapan yang boleh dirayu di pihak hakim Mahkamah Tinggi yang mewajarkan campur tangan rayuan (lihat perenggan 38–40 & 42–43).]

Cases referred to

Aikbee Timbers Sdn Bhd & Anor v Yii Sing Chiu & Anor and another appeal [2024] 1 MLJ 948, CA (distd)

AUM Capital Sdn Bhd v Menara UOA Bangsar Management Corporation [2024] MLJU 421, CA (refd)

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393, FC (refd)

Conlay Construction Sdn Bhd v Perembun (M) Sdn Bhd [2014] 1 MLJ 80, FC (refd)

Ekuiti Setegap Sdn Bhd v Plaza 393 Management Corp (established under The Strata Titles Act 1985) [2018] 4 MLJ 284, CA (refd)

Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ 1; [2004] 4 CLJ 309, FC (refd)

Muhamad Nazri bin Muhamad v JMB Menara Rajawali & Anor [2020] 3 MLJ 645; [2018] 9 CLJ 547, CA (refd)

Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors [2020] 12 MLJ 67; [2020] 10 CLJ 1, FC (refd)

Perbadanan Pengurusan Endah Parade v Magnificient Diagraph Sdn Bhd [2013] 6 MLJ 343, CA (refd)

SCP Assets Sdn Bhd v Perbadanan Pengurusan PD-1 [2024] MLJU 168, HC (refd)
Sodalite Sdn Bhd & Ors v 1 Mont' Kiara and Kiara 2 Management Corp & Ors [2021] 12 MLJ 116, HC (refd)
Yong Kein Sin & Anor v Perbadanan Pengurusan Springtide Residences and other appeals [2025] MLJU 1469, CA (refd)

Legislation referred to

Companies Act 2016
National Land Code s 417
Rules of Court 2012 O 53 r 7
Strata Management Act 2013 ss 8, 60, 60(3), (3)(b), 65, First Schedule
Strata Titles (Selangor) Rules 2015
Strata Titles Act 1985

Appeal from: *SCP Assets Sdn Bhd v Perbadanan Pengurusan PD-1* [2024] MLJU 168 (High Court, Kuala Lumpur)

Lai Chee Hoe (with Angeline Ang Mei Fong) (Chee Hoe & Assoc) for the appellant.
Ashok Kandiah (with Ling Chee Wei and Celinne Teh) (Ho, Loke & Koh) for the respondent.

Lim Chong Fong JCA:

INTRODUCTION

[1] This is an appeal concerning a dispute over the rates of maintenance charges imposed on car parks in a mixed commercial development project.

[2] The appellant, who was the defendant in the High Court below is a management corporation constituted pursuant to the Strata Titles Act 1985 ('the STA').

[3] The respondent, who was the plaintiff in the High Court below is a private limited company incorporated pursuant to the Companies Act 2016.

[4] We heard the appeal on 5 February 2025 and 26 March 2025, and thereafter adjourned our decision to deliberate on the contentions advanced by the parties.

[5] Now having done so, we give our decision below together with the reasons in support thereof.

A BACKGROUND

[6] The factual background to this dispute begins with a commercial development project known as Pusat Dagangan Phileo Damansara 1 ('PD1 complex'), which was developed by AAB Damansara Sdn Bhd (formerly known as Phileo Damansara Sdn Bhd) ('the developer').

[7] The PD1 complex comprises seven blocks containing 72 ground floor shop parcels and 551 upper floor office parcels, one block of a seven-storey office tower ('Bangunan Yin'), surface car park bays at ground level, and three levels of basement car park bays located beneath the aforementioned seven blocks and Bangunan Yin.

[8] By a sale and purchase agreement dated 6 September 2000, the developer sold the basement car park bays of the seven blocks to PD1 Corporate Parking Sdn Bhd ('PD1 Corporate Parking') for a purchase price of RM39,375,000.

[9] Further, by a supplemental sale and purchase agreement dated 26 September 2002, the developer sold the ground floor surface car park bays of the seven blocks to PD1 Corporate Parking for a purchase price of RM1,905,000.

[10] Additionally, by another sale and purchase agreement dated 15 March 2006, the developer and Intershine Sdn Bhd sold the basement car park bays of Bangunan Yin to PD1 Corporate Parking for a purchase price of RM2.52m.

[11] Subsequently, pursuant to a corporate restructuring exercise, the respondent acquired all the car park bays from PD1 Corporate Parking.

[12] Upon the establishment of the appellant and the convening of its first annual general meeting held on 30 November 2017, the appellant, following a vote by way of private motion ('private motion No 1'), implemented and imposed different rates of maintenance charges from those previously imposed by the developer.

[13] As a result, the respondent commenced Shah Alam High Court Suit Civil Suit No BA-22NCVC-44–01 of 2018 ('the suit') against the appellant on 29 January 2018.

IN THE HIGH COURT

[14] The respondent primarily contended that the vote poll conducted by the appellant is unlawful as it was in contravention of the STA as well as the

Strata Management Act 2013 ('the SMA') because the rates of maintenance charges have been established and approved by the relevant statutory authority.

[15] As such the respondent claimed the following reliefs:

(a) a declaration that private motion No 1 set out in para 6(a) of the statement of claim is unlawful, invalid and/or void;

(b) an injunction restraining the defendant whether by itself or through its agent or servant from putting into effect and enforcing the rate of charges in private motion No 1 passed at the annual general meeting of the defendant held on 30 November 2018;

(c) an injunction ordering and directing the defendant to immediately cancel all the tax invoices issued by the defendant to the plaintiff for the period from January 2018 to March 2018 and all other tax invoices that may be issued with rate and charges mentioned in private motion No 1;

(d) general damages against the defendant;

(e) exemplary damages against the defendant;

(f) further or other orders; and

(g) costs.

[16] The appellant, however, responded that the rates of maintenance charges imposed as a result of the vote by poll are lawful and fair, having regard to the different types of parcels within the PD1 complex. Accordingly, the appellant contended that it properly imposed different rates for the various parcels in the PD1 complex, depending on their respective usage.

[17] Furthermore, the appellant contended that there was a conspiracy between the developer and the respondent to allocate minimum share units to the PD1 complex carpark bays; thus, the maintenance charges payment payable by the developer is minimal. Consequently, the appellant counterclaimed and asked for the following reliefs:

(a) the principal sum of RM266,503.63 as at 21 March 2018 or such amount as this honourable court deems fit and proper and further amount due on an accruing basis;

(b) interest at the rate of 10% (pursuant to the SMA 2013) in the sum of RM266,503.63 from 1 January 2018 until the date of full realisation;

(c) interest at the rate of 5%pa on the total judgment sum in para 67(a) above (of the defence and counterclaim) from the date of judgment to the date of full realisation;

(i) an order that the share units allocated to PD1 approved by the Lands and Mines Selangor are null and void;

(ii) that the court hereby orders that the defendant or any other body who has a duty or is responsible to maintain and manage the sub-divided building to re-allocate share units in accordance with the formula set out in the Strata Titles (Selangor) Rules 2015; and

(iii) that pursuant to s 417 of the National Land Code, the court hereby orders that the Director of Survey and Director of Lands and Mines Selangor shall adopt the share units to the whole development area (as defined in Strata Management Act 2013) of the defendant.

(d) costs; and

(e) any other reliefs this honourable court deems fit and proper.

[18] The learned High Court judge found in favour of the respondent by allowing its claim and dismissed the appellant's counterclaim ('decision'). The High Court's grounds of judgment are reported as *SCP Assets Sdn Bhd v Perbadanan Pengurusan PD-1* [2024] MLJU 168:

> [38] I am not saying, even for one moment, that Management Corporation is not entitled to rely on s 60(3)(b). It can. In short, there is nothing to stop the Management Corporation from relying on the phrase 'significantly different purposes'. But the general guideline is that, as was held by the Court of Appeal in *Pearl Suria*, such an exercise of discretion must be just and reasonable. What is just and reasonable is, therefore, a question of fact in the circumstances of each case.
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> ...
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> [40] It has been established that the premise of exercising discretion, as admitted by DW2, was anchored on the belief that the units had been inequitably allocated. Even if this court were to accept this argument as a valid ground to rely on s 60(3)(b), the burden is still on the defendant to establish that the share units were inequitably allocated.
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> ...
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> [42] If indeed, the defendant is aggrieved with what it said to be an inequitable allocation of the share units, what would be the right course of action to take? The process of ascertaining and allocating share units in applying for the subdivision of land and strata title involved the developer, their agent, the licensed land surveyor and the Selangor Director of Lands and Mines.
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> [43] The letter dated 4 April 2017 from the Majlis Bandaraya Petaling Jaya to PD1 Joint Management Body ('PD1 JMB'). The defendant is the successor of PD1 JMB. The letter dated 4 April 2017, inter alia, states as follows:
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> > Ini bermakna unit syer setiap petak telah disediakan oleh Jurukur tanah berlesen pemaju dan unit syer tersebut telah diluluskan oleh Pengarah Tanah dan Galian

di bawah s 18, Akta 316 sebelum Akta 757 berkuatkuasa.

[44] There is another letter from the Selangor Director of Lands and Mines dated 16 April 2017 addressed to PD1 JMB, which confirmed that the allocation of the share units was based on the selling price formula:

Untuk makluman pihak tuan, unit syer bagi petak di kawasan pemajuan Pusat Dagangan Phileo Damansara 1 mengikut formula harga jualan.

...

[47] By challenging the impugned decision in this suit, the defendant is, in effect, initiating a collateral attack against the decision-maker, in this case, the Selangor Director of Lands and Mines, who is not even made a party. With respect, I do not think that this is allowed. The impugned decision is not even a mixture of public and private law. It is purely within the ambit of public law.

[48] To begin with, the Director of Lands and Mines is a public authority. Any challenge against his decision must be commenced by way of a judicial review under O 53 of the Rules of Court 2012 ('the ROC').

[49] It is therefore too late in the day for the defendant to assert that the allocation of the share units is inequitable and to use this argument to seek refuge under s 60(3)(b). I would even venture further to state that the failure of the defendant to challenge the impugned decision makes the whole exercise of relying on s 60(3)(b) premature.

...

[52] Applying the said proposition, it is my considered view that by failing to take the matter up via O 53 of the ROC, the defendant has effectively squandered the opportunity to ventilate on the issue of whether the allocation of the share units is inequitable.

[53] There has to be a finality in the impugned decision made by the Selangor Director of Lands and Mines in April 2017. The defendant uses this suit, which was filed in January 2018, to mount a collateral challenge against the impugned decision when the Director was not even a party to the suit. To begin with, this approach is certainly not desirable. In *Lembaga Lebuhraya Malaysia v Cahaya Baru Development Bhd* [2009] 5 MLJ 14; [2009] 4 MLRA 125; [2010] 4 CLJ 419, the respondent, who was the plaintiff at first instance, sought declaratory reliefs by way of an originating summons without making the Land Administrator a party when the declaratory reliefs sought would affect the statutory duties and powers of the Land Administrator. Abdul Malik Ishak JCA, in his judgment at the Court of Appeal, remarked as follows:

Finally, in seeking those declaratory reliefs by way of an originating summons without making the land administrator as a party when the declaratory reliefs sought would affect the statutory duties and powers of the land administrator cannot be condoned by this court. In *Air Express International (M) Sdn Bhd v MISC Agencies Sdn Bhd* [2008] 2 MLRH 678; [2008] 9 CLJ 209, the plaintiff sought various declaratory orders against the Customs Department. Since the latter was not made a party and had no opportunity to defend itself, Abdul

Wahab Patail J, rightly refused to grant the declarations against the Customs Department.

[54] In the circumstances, whatever expert evidence tendered by the defendant should have been adduced when challenging the impugned decision by way of a judicial review. If indeed the impugned decision of the Director of Lands and Mines was tainted with *Wednesbury* unreasonableness or Anisminic error, it should have been challenged within the time stipulated under O 53 r 3(6) of the ROC. The defendant should have ventilated the argument against the selling price formula adopted by the Selangor Director of Lands and Mines in an application for judicial review and not in this suit.

[55] It should be recalled that the defendant's reliance on s 60(3)(b) of the SMA is anchored on the purported inequitable allocation of the share units. For the reasons that I have stated, that decision of the allocation of the share units by the Selangor Director of Lands and Mines stands unchallenged. In the circumstances, the defendant's case has no legs to stand on. The whole argument collapses like the proverbial house of cards.

...

[63] In the result, my findings on the issues raised are as follows:

(a) private motion No 1 and the subsequent increase in charges and sinking fund contribution contributions by the defendant against the plaintiff are based on the premise that the units had been inequitably allocated. The allocation of the share units was made by the Selangor Directors of Lands and Mines. Any challenge made against the impugned decision must be by way of a judicial review application. Since there was no challenge made, the allocation made on the share units was, therefore, final. In the circumstances, the defendant had no authority to pass private motion No 1 without first challenging the impugned decision. In short, private motion No 1 is premature;

(b) s 60(3)(b) of the SMA allows the defendant, as the Management Corporation, to rely on the phrase 'significantly different purposes' and, therefore, impose different rates of charges for the different parcels. But such an exercise of discretion must be just and reasonable. Since the defendant failed to challenge the impugned decision through a judicial review, it is not open for the defendant to say now that the impugned decision is not equitable. That amounts to a collateral attack, which this court refuses to allow;

(c) however, there is no evidence before the court that private motion No 1 and the subsequent increase in charges and sinking fund contribution contributions by the defendant against the plaintiff is tainted with mala fide. Different interpretations of the law, albeit in error, without more, cannot be construed as mala fide;

(d) since the passing of private motion No 1 is wrong in law, the attendant consequences would be the unlawful increase in the charges and sinking fund contribution contributions by the defendant against the plaintiff had

caused loss and damage to the plaintiff in that the plaintiff is subject to a higher payment which is not legally justified;

(e) the allocation of the share units that was based on the selling price formula was not determined by the developer, let alone arbitrarily. Since the impugned decision was made by the Director of Lands and Mines, and there was no challenge made on the same, this court cannot issue an order for the re-allocation of the share units for the car park parcels. Granting an order sought by the defendant would invite a breach of the principles of natural justice since the Director of Lands and Mines ought to be given the right to be heard;

(f) even if the defendant were to add the developer, licensed land surveyor and the Selangor Director of Lands and Mines as parties to this suit, there is nothing that this court could do since the proper mode of commencement to challenge the impugned decision would be by way of a judicial review; and

(g) even if the expert evidence adduced by the defendant is admissible and credible, it cannot on its own give the jurisdiction to this court to quash the impugned decision made by the Director of Lands and Mines.

[64] I therefore make the following orders:

(a) a declaration that private motion No 1 is premature and therefore unlawful, invalid and void;

(b) an injunction restraining the defendant, whether by itself or through its agent or servant, from putting into effect or enforcing the rate of charges in private motion No 1 passed at the AGM of the defendant on 30 November 2017;

(c) an injunction ordering and directing the defendant to cancel all the tax invoices issued by the defendant to the plaintiff for the period from January 2018 to March 2018 and all other tax invoices that may be issued with rates and charges mentioned in private motion No 1; and

(d) the counterclaim against the plaintiff is dismissed.

[19] The appellant is dissatisfied with the decision and has on 24 November 2023 appealed to the Court of Appeal.

FINDINGS OF THIS COURT

[20] Our function in this appeal is merely to review the decision made after trial, based on the record of appeal.

[21] In *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309 (FC), Steve Shim CJ (Sabah and Sarawak) held as follows, with emphasis added by us at para [20]:

In gist, the pivotal question raised by the appellants was whether the term 'insufficient judicial appreciation of the evidence' used by the Court of Appeal constituted a new test for appellate intervention. We think it is important to examine this proposition in the light of what the Court of Appeal had said in its judgment beginning from para 27 which we have reproduced earlier but repeated herein for the purpose of emphasis. It states:

> *Suffice to say that we re-affirm the proposition that an appellate court will not, generally speaking, intervene unless the trial court is shown to be plainly wrong in arriving at its conclusion. But appellate interference will take place in cases where there has been no or insufficient judicial appreciation of the evidence*. It is, we think, appropriate that we say what judicial appreciation of evidence involves.

And the Court of Appeal went on to explain in para 28 as follows:

> *A judge who is required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accepting or rejecting the whole or any part of the evidence placed before him. He must, when deciding whether to accept or to reject the evidence of a witness test it against relevant criteria*. He must also test the evidence of a particular witness against the probabilities of the case.

In making the observations above, the Court of Appeal cited the following cases: *Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229; [1979] 1 LNS 119; *Muniandy & Ors v Public Prosecutor* [1966] 1 MLJ 257; [1966] 1 LNS 110; *Dr Shanmuganathan v Periasamy s/o Sithambaram Pillai* [1997] 3 MLJ 61; [1997] 2 CLJ 153; *Yusoff bin Kassim v Public Prosecutor* [1992] 2 MLJ 183; [1992] 3 CLJ 1535; [1992] 1 CLJ Rep 376; *Rex v Low Toh Cheng* [1941] 1 MLJ 1; *Tengku Mahmood v Public Prosecutor* [1974] 1 MLJ 110; [1974] 1 LNS 176; *Choo Kok Beng v Choo Kok Hoe & Ors* [1984] 2 MLJ 165b; [1984] 1 LNS 40; *Armagas Ltd v Mundogas SA ('The Ocean Frost')* [1985] 1 L1 R 1; *State of Rajasthan v Hanuman* (AIR) [2001] SC 282, 284; *Tek Chand v Dile Ram* AIR [2001] SC 905.

In our view, the Court of Appeal in citing these cases had clearly borne in mind the central feature of appellate intervention ie, to determine whether or not the trial court had arrived at its decision or finding correctly on the basis of the relevant law and/or the established evidence. In so doing, the Court of Appeal was perfectly entitled to examine the process of evaluation of the evidence by the trial court. Clearly, the phrase 'insufficient judicial appreciation of evidence' merely related to such a process. This is reflected in the Court of Appeal's restatement that a judge who was required to adjudicate upon a dispute must arrive at his decision on an issue of fact by assessing, weighing and, for good reasons, either accepting or rejecting the whole or any part of the evidence placed before him. The Court of Appeal further reiterated the principle central to appellate intervention ie, that a decision arrived at by a trial court without judicial appreciation of the evidence might be set aside on appeal. This is consistent with the established plainly wrong test.

In the circumstances and for the reasons stated, there is no merit in the appellants' contention that the Court of Appeal had adopted a new test for appellate intervention. In our view, what the Court of Appeal had done was merely to

> accentuate the established plainly wrong test consistently applied by the appellate courts in this country.

See also *Conlay Construction Sdn Bhd v Perembun (M) Sdn Bhd* [2014] 1 MLJ 80 (FC) and *Ng Hoo Kui & Anor v Wendy Tan Lee Peng (administratrix for the estate of Tan Ewe Kwang, deceased) & Ors* [2020] 12 MLJ 67; [2020] 10 CLJ 1 (FC).

[22] At the outset of the appeal, the appellant made it clear to us that it is not contesting the share units allocated to the car park parcel bays of the PD1 complex by the Director of Lands and Mines, Selangor.

[23] Before us, the appellant contends that it nonetheless has the power to determine and impose different rates of maintenance charges for different parcels of the PD1 complex, and to enforce the same accordingly. In this regard, the appellant further relies on a letter from the commissioner of buildings dated 29 November 2016, addressed to the joint management body of the PD1 complex, which was the appellant's predecessor. The said letter is reproduced below:

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"KEJUJURAN DAN KETEKUNAN"

Ruj. Kami : MBPJ/030200/T/R2/COB/0016/PDPD(I)/07
Tarikh : 29 November 2016

C

PD1 Joint Management Body
Pejabat Pengurusan
Ground Floor,
Pusat Dagangan Phileo Damansara 1,
No. 9, Jalan 16/11, Off Jalan Damansara,
46350 Petaling Jaya,
SELANGOR DARUL EHSAN

D

Tuan,

RE: DIFFERENT SURCHARGE RATES TO BE APPLIED TO DIFFERENT CATEGORY .

Saya dengan hormatnya merujuk kepada perkara di atas dan surat tuan bertarikh 17hb Oktober 2016 adalah sama.

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2. Untuk makluman tuan, Badan Pengurusan Bersama (JMB) tidak boleh menggunakan seksyen 60 Akta 757, kerana lanya hanya boleh di guna pakai oleh Perbadanan Pengurusan(MC) sahaja. Namun, pentadbiran ini tidak menghalang sektranya pihak JMB ingin mengenakan kadar yang berbeza untuk yuran penyelenggaraan dan caruman kepada kumpulan wang penjelas pada setiap unit jika lanya merupakan suatu ketetapan yang diluluskan pada suatu mesyuarat agung tahunan atau mesyuarat agung luar biasa. Pengiraan untuk setiap kadar harus di terangkan kepada pemilik yang hadir supaya mereka faham dan jelas tentang perkara tersebut.

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3. Sekiranya kuorum mesyuarat agung berkenaan bersetuju melaksanakan pengenaan kadar yang baru untuk caj penyelenggaraan dan caruman kepada kumpulan wang penjelas, maka keputusan itu sah dan kadar tersebut boleh di guna pakai. Namun, harus di ingatkan bahawa kadar tersebut mestilah di kenakan mengikut unit syer setiap petak dalam kawasan pemajuan berkenaan seperti yang dinyatakan di dalam Akta 757 di bawah:-

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**Note : Serial number will be used to verify the originality of this document via eFILING por

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21. kewajipan dan kuasa badan pengurusan bersama
(2) kuasa badan pengurusan bersama adalah seperti yang berikut:

(a) untuk memungut Caj daripada pemunya petak mengikut kadar unit syer yang diumpukkan bagi petak mereka masing-masing;

25. pemunya petak hendaklah membayar caj, dan caruman kepada kumpulan wang penjelas, kepada badan pengurusan bersama

(3) Jumlah Caj yang kena dibayar di bawah subseksyen (1) dan (2) hendaklah ditentukan oleh badan pengurusan bersama dari semasa ke semasa mengikut kadar unit syer yang diumpukkan bagi setiap petak.

4. Sehubungan itu, diharapkan agar pihak puan jelas dengan penerangan di atas.

Sekian, harap maklum.

"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

(NOR SHABAN BIN TI JOHARI)
Ketua Unit Pesuruhjaya Bangunan
b/p Pesuruhjaya Bangunan
Kawasan Majlis Bandaraya Petaling Jaya.

s.k Pejabat Datuk Bandar
Pesuruhjaya Bangunan
Majlis Bandaraya Petaling Jaya

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[24] As a result, the appellant, pursuant to private motion No 1 which was passed by virtue of 35,868 vote majority, determined the following rate of monthly maintenance charges payment for the PD1 complex:

(a) PD1 blocks upper floors: RM0.70 per share unit;

(b) PD1 blocks ground floor: RM0.32 per share unit;

(c) Bangunan Yin upper floors: RM1.08 per share unit;

(d) Bangunan Yin ground floor: RM0.60 per share unit;

(e) PD1 blocks basement carpark: RM4.85 per share unit; and

(f) Bangunan Yin basement carpark: RM11.91 per share unit.

The upper floors of the PD1 blocks and all the floors of Bangunan Yin comprise of offices whilst the ground floor of the PD1 blocks comprises of

A mixed offices and shops. Details of the computation of the variable rates ('computation') based on direct cost allocation methodology are tabulated in the following tables below:

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No.	Description	Direct Cost Allocation (DCA)				Shared Cost Allocation (SCA)	Monthly	Annum
		PD1	Bangunan Yin	Basement Carpark				
		Office & Ground Floor	Office & Ground Floor	PD1 (PD1:B1, B2 & B3) (BY:B2 & B3)	BY (BY:B1)			
	OTHER INCOME							
1	RENTAL					20,000.00	20,000.00	RM 240,000.00
2	INTEREST					6,000.00	6,000.00	RM 72,000.00
	TOTAL INCOME (RM)					26,000.00	RM 26,000.00	RM 312,000.00
	FIXED EXPENDITURES							
3	SERVICES - CLEANING	21,627.64	2,533.80	2,291.85	346.50	7,146.61	33,946.40	RM 407,356.80
4	SERVICES - SECURITY		4,437.81		616.19	89,670.00	94,724.00	RM 1,137,828.00
5	MAINTENANCE - LIFT	45,142.10	2,325.00	5,791.23	258.33		53,516.66	RM 642,199.92
6	MAINTENANCE - FIRE FIGHTING SYS	2,023.84	346.45	826.16	53.55		3,250.00	RM 39,000.00
7	SERVICES - CHARGEMAN	3,704.29	1,559.02	695.71	240.98		4,200.00	RM 50,400.00
8	SERVICES - ELECTRICAL INSPECTION					720.00	720.00	RM 8,640.00
9	SERVICES - GARBAGE COLLECTION	4,188.70	519.67	1,681.30	80.33		6,400.00	RM 76,800.00
10	SERVICES - MANAGEMENT FEE					15,000.00	15,000.00	RM 180,000.00
11	SERVICES - MANAGEMENT STAFF COST					33,000.00	33,000.00	RM 396,000.00
12	SERVICES - PEST CONTROL					820.00	820.00	RM 9,840.00
13	SERVICES - PHOTOCOPIER RENTAL					370.00	370.00	RM 4,440.00
14	SERVICES - LANDSCAPING					3,600.00	3,600.00	RM 43,200.00
15	SERVICES - COMPORTAL (GRAAAB)					720.00	720.00	RM 8,640.00

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No.	Description	Direct Cost Allocation (DCA)				Shared Cost Allocation (SCA)	Monthly	Annum
		PD1	Bangunan Yin	Basement Carpark				
		Office & Ground Floor	Office & Ground Floor	PD1 (PD1:B1, B2 & B3) (BY:B2 & B3)	BY (BY:B1)			
	FIXED EXPENDITURES (Cont'd)							
16	FIRE EXTINGUISHER					700.00	700.00	RM 8,400.00
17	SERVICE - AIR-COND					750.00	750.00	RM 9,000.00
	UTILITY CHARGES							
18	ELECTRICITY CHARGES	28,973.70	10,347.48	1,757.87	1,393.18	20,527.77	63,000.00	RM 756,000.00
19	TELEPHONE & INTERNET CHARGES					800.00	800.00	RM 9,600.00
	VARIABLE EXPENDITURES							
20	BANK CHARGES					100.00	100.00	RM 1,200.00
21	PROFESSIONAL FEE					4,166.67	4,166.67	RM 50,000.04
22	REFRESHMENT					1,000.00	1,000.00	RM 12,000.00
23	MEETING ALLOWANCE (8 WEEKLY/AGM/EGM)					5,400.00	5,400.00	RM 64,800.00
24	MEETING FACILITIES EXPENSES (MC/SUB-COM. MEETING/AGM/EGM)					350.00	350.00	RM 4,200.00
25	ELECTRICAL CALIBRATION					892.50	892.50	RM 10,710.00
26	AUDIT FEE					547.50	547.50	RM 6,570.00
27	QUIT RENT					10,524.50	10,524.50	RM 126,294.00
28	INSURANCE	7,415.36	548.75	4,935.72	121.32	463.75	13,485.90	RM 161,830.81

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No.	Description	Direct Cost Allocation (DCA)				Shared Cost Allocation (SCA)	Monthly	Annum
		PD1	Bangunan Yin	Basement Carpark				
		Office & Ground Floor	Office & Ground Floor	PD1 (PD1:B1, B2 & B3) (BY:B2 & B3)	BY (BY:B1)			
	VARIABLE EXPENDITURES (Cont'd)							
29	ASSESSMENT					6,500.00	6,500.00	RM 78,000.00
30	LICENSE FEE					2,340.00	2,340.00	RM 28,080.00
31	STATIONERY					2,000.00	2,000.00	RM 24,000.00
32	FESTIVAL & EVENTS					750.00	750.00	RM 9,000.00
33	TOOLS AND EQUIPMENTS					2,500.00	2,500.00	RM 30,000.00
	REPAIR & MAINTENANCE							
34	SERVICES - VENTILATION SYSTEM					9,300.00	9,300.00	RM 111,600.00
35	SERVICES - SUMP PUMP					1,000.00	1,000.00	RM 12,000.00
36	SERVICES - SEWERAGE CLEANING					3,600.00	3,600.00	RM 43,200.00
37	SERVICES - CCTV SURVEILLANCE					1,250.00	1,250.00	RM 15,000.00
38	SERVICES - RETAINING WALL					375.00	375.00	RM 4,500.00
39	ELECTRICAL WIRING & FITTING					10,000.00	10,000.00	RM 120,000.00
40	SANITARY & PLUMBING					10,000.00	10,000.00	RM 120,000.00
41	GENERAL MAINTENANCE & REPAIRS					10,000.00	10,000.00	RM 120,000.00
	TOTAL EXPENDITURE (RM)	111,005.63	22,618.98	17,979.84	3,180.38	256,884.30	RM 411,669.13	RM 4,940,029.67
	NETT EXPENDITURE (RM)	111,005.63	22,618.98	17,979.84	3,180.38	230,884.30	RM 385,669.13	RM 4,628,029.67

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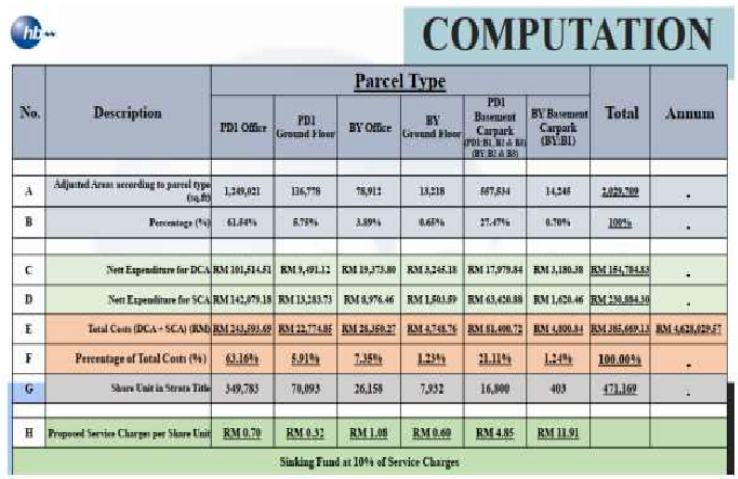
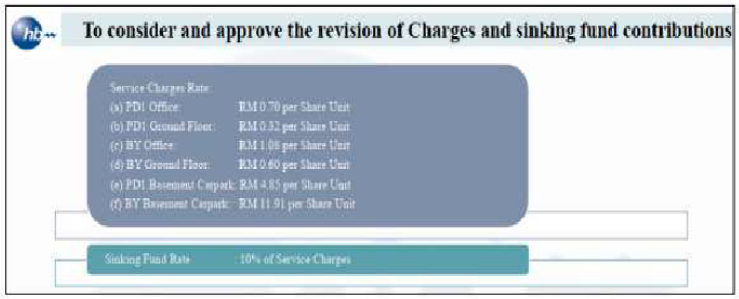


COMPUTATION

No.	Description	Parcel Type						Total	Annum
		PD1 Office	PD1 Ground Floor	BY Office	BY Ground Floor	PD1 Basement Carpark (PD1 B1, B2 & B3) (BY B2 & B3)	BY Basement Carpark (BY B1)		
A	Adjusted Areas according to parcel type (sq.ft)	1,349,021	126,778	78,912	18,218	607,834	14,248	2,029,709	.
B	Percentage (%)	61.64%	5.75%	3.89%	0.65%	27.47%	0.70%	100%	.
C	Nett Expenditure for DCA	RM 101,514.51	RM 9,491.12	RM 19,373.80	RM 3,245.18	RM 17,979.84	RM 1,180.38	RM 184,784.83	.
D	Nett Expenditure for SCA	RM 142,079.18	RM 13,283.73	RM 8,976.46	RM 1,503.89	RM 63,420.88	RM 1,620.46	RM 230,884.30	.
E	Total Costs (DCA + SCA) (RM)	RM 243,593.69	RM 22,774.85	RM 28,350.27	RM 4,748.76	RM 81,400.72	RM 4,800.84	RM 385,669.13	RM 4,628,029.57
F	Percentage of Total Costs (%)	63.16%	5.91%	7.35%	1.23%	21.11%	1.24%	100.00%	.
G	Share Unit in Strata Title	349,783	78,093	26,158	7,932	16,800	403	479,169	.
H	Proposed Service Charges per Share Unit	RM 0.70	RM 0.32	RM 1.08	RM 0.60	RM 4.85	RM 11.91		
	Sinking Fund at 10% of Service Charges								


To consider and approve the revision of Charges and sinking fund contributions
Service Charges Rate:
(a) PD1 Office: RM 0.70 per Share Unit
(b) PD1 Ground Floor: RM 0.32 per Share Unit
(c) BY Office: RM 1.08 per Share Unit
(d) BY Ground Floor: RM 0.60 per Share Unit
(e) PD1 Basement Carpark: RM 4.85 per Share Unit
(f) BY Basement Carpark: RM 11.91 per Share Unit
Sinking Fund Rate : 10% of Service Charges

According to the appellant, the respondent has inequitably been paying RM0.82 per share unit for the PD1 basement carpark and RM0.64 per share unit for the Bangunan Yin basement carpark respectively only.

[25] Furthermore, the appellant contended that as a matter of law, the adoption and imposition of multiple variable rate of maintenance charges for different parcels is permissible by virtue of s 60(3) of the SMA as applied in *Aikbee Timbers Sdn Bhd & Anor v Yii Sing Chiu & Anor and another appeal* [2024] 1 MLJ 948 (CA). It is provided as follows in s 60 of the SMA:

> 60 Maintenance account of the management corporation
>
> (1) If the maintenance account in the name of the management corporation had not been earlier established under subsection 50(1), the management corporation shall open and maintain a maintenance account in the name of the management corporation, with a bank or financial institution.
>
> (2) The maintenance account shall consist of all moneys specified in subsection 50(2), and all moneys in the maintenance account shall be used for the purposes specified in subsection 50(3).

(3) Subject to section 52, for the purpose of establishing and maintaining the maintenance account, the management corporation may at a general meeting —

(a) determine from time to time the amount to be raised for the purposes mentioned in subsection 50(3);

(b) raise the amounts so determined by imposing Charges on the proprietors in proportion to the share units or provisional share units of their respective parcels or provisional blocks, and the management corporation may determine different rates of Charges to be paid in respect of parcels which are used for significantly different purposes and in respect of the provisional blocks; and

(c) determine the amount of interest payable by a proprietor in respect of late payments which shall not exceed the rate of ten per cent per annum.

(4) Any Charges imposed under subsection (3) in respect of a parcel shall be due and payable on the passing of a resolution to that effect by the management corporation and in accordance with the terms of that resolution, and may be recovered in the manner set out in section 78 from the proprietor of, or his successor-in-title to, the parcel, or the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and who would receive the same if the parcel were let to a tenant.

(5) Any Charges imposed under subsection (3) in respect of a provisional block shall be due and payable on the passing of a resolution to that effect by the management corporation and in accordance with the terms of that resolution, and may be recovered in the manner set out in section 78 from the proprietor of the provisional block or, where the building to which the provisional block relates has been subdivided, from the proprietors of the parcels in the building, or their successors-in-title, in proportion to the share units of their respective parcels.

(6) For the purposes of subsection (5), 'proprietor' includes a purchaser to be duly registered as a proprietor.

[26] The appellant further contended that the rate of maintenance charges consists of two independent components, namely share units and expenditure, pursuant to s 65 of the SMA. The test for determining the share unit-based charges is what is equitable, whereas the test for determining the expenditure-based charges is what is just and reasonable. Accordingly, the rate of charges is not fixed but fluid; see *Muhamad Nazri bin Muhamad v JMB Menara Rajawali & Anor* [2020] 3 MLJ 645; [2018] 9 CLJ 547. Section 65 of the SMA provides as follows:

65 Expenses of subsidiary management corporation

The expenses of a subsidiary management corporation that relate solely to its

A limited common property shall be shared, from time to time, by the proprietors of all parcels entitled under this Chapter to the exclusive benefit of the limited common property, and each parcel's share of contribution shall be calculated as follows:

B $\frac{A \times C}{B}$

Where —

A is the share unit of a parcel;

C B is the aggregate share units of all parcels entitled to the exclusive benefit of the limited common property; and

C is the total contributions determined by the subsidiary management corporation as payable by proprietors of all parcels entitled to the exclusive benefit of the limited common property.

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[27] In the premises, the appellant contended that the maintenance charges imposed in the PD1 complex prior to private motion No 1 were grossly unfair, as there was no reasonable correlation between the share units and the common E property maintenance expenditure incurred. The respondent owns 40.33% of the total area in the PD1 complex but pays only 3.75% of the maintenance charges, whereas the other parcel owners, who collectively own 59.67% of the total area, bear 96.5% of the maintenance charges. This is illustrated in the following table:

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Parcel	Square feet	Share units	Percentage (square feet) %	Percentage (share units) %
PD1 7 blocks of office and shop lot	1,364,641	419,442	55.58%	89.02%
Bangunan Yin (office block)	100,402	34,090	4.09%	4.09%
PD1 — car park	911,473	16,400	37.12%	3.48%
Bangunan Yin — car park	78,763	1,267	3.21%	0.27%
Total	2,455,279	471,199	100%	100%

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[28] Apparently, this anomaly was corrected via private motion No 1 and must therefore accordingly be adopted. It was contended that the resultant

different rate of maintenance charges as per private motion No 1 are not inadequate, excessive or unreasonable.

[29] The respondent in rebuttal contended that the appellant's contentions now before us were not its pleaded case in the High Court but raised for the first time in this appeal.

[30] Be that as it may, the respondent further pointed out that the appellant's predecessor, the joint management body of PD1 complex had previously attempted to impose like maintenance charges. This was, albeit approved by the Commissioner of Buildings, successfully resisted by the respondent and PD1 Corporate Parking via Shah Alam High Court Civil Suit No BA-22NCVC-233–04 of 2017 where the High Court declared that the increase in the maintenance charges payment imposed upon the respondent is invalid. The High Court's decision has been subsequently affirmed by this court.

[31] The respondent strenuously contended that the implementation of the private motion No 1 through imposing different rates of maintenance charges are discriminatory and designed to compel the respondent who owns the PD1 block basement carpark parcels as well as Bangunan Yin basement carpark parcels to pay unusually higher maintenance charges as compared to the other parcel owners in the PD1 complex for common property expenditure.

[32] In this regard, it was argued for the respondent that, the appellant's purported exercise of discretionary powers pursuant to s 60(3)(b) of the SMA is baseless and flawed. Additionally, it was done in bad faith to discriminate and harass the respondent. This is merely the continuing pattern of conduct subsequent to the formation of the joint management body to unlawfully impose higher discriminatory maintenance charges on the respondent.

[33] According to the respondent, the imposition of maintenance expenditure charges must be that as mandated by the STA whereby the payment of these charges must be determined solely on share unit basis: see *Ekuiti Setegap Sdn Bhd v Plaza 393 Management Corp (established under The Strata Titles Act* 1985) [2018] 4 MLJ 284 (FC) and *Perbadanan Pengurusan Endah Parade v Magnificient Diagraph Sdn Bhd* [2013] 6 MLJ 343 (CA). It is not for the appellant to willy-nilly impose different rates of maintenance charges because of its belief that the share units had been incorrectly allocated. The discretion conferred on the appellant to apply different rates can only be legitimately exercised where the parcels are used for significantly different purposes; see *AUM Capital Sdn Bhd v Menara UOA Bangsar Management Corporation* [2024] MLJU 421 (CA) and *Sodalite Sdn Bhd & Ors v 1 Mont' Kiara and Kiara 2 Management Corp & Ors* [2021] 12 MLJ 116. There is

however no justifiable reason to increase the maintenance charges due to carpark operation here per se.

[34] We have carefully scrutinised the evidence adduced as well as the arguments advanced by the parties.

[35] Based on our reading of the STA and the SMA, we find that the sharing of maintenance charges in a stratified development is generally determined by the share units of a parcel owner, in proportion to the total annual maintenance expenditure for the common property of the entire development, which is collectively borne by all parcel owners.

[36] Notwithstanding the general rule, s 60(3) of the SMA provides for the imposition of different rates of maintenance charges in respect of parcels that are used for significantly different purposes. This principle was recognised in *Aikbee Timbers Sdn Bhd & Anor v Yii Sing Chiu & Anor and another appeal* (*Pearl Suria*'s case), which concerned Pearl Suria, a mixed commercial and residential development. In that case, Choo Kah Sing JCA held as follows:

> [41] The formula for the calculation of the chargeable rate for the maintenance charges in the Second Schedule of the SPA must be understood to apply to a group of common proprietors who have the same rights and enjoy the same benefits of the same common facilities and common property. Therefore, they share the same responsibilities to maintain these common facilities and common property.
>
> [42] Section 2 of the SMA 2013 defines 'common property', which is relevant to the present case, as 'in relation to a subdivided building or land, means so much of the lot: (i) as is not comprised in any parcel, including any accessory parcel, or any provisional block as shown in a certified strata plan; and (ii) used or capable of being used or enjoyed by occupiers of two or more parcel'.
>
> ...
>
> [57] Reading sub-s 52(6) and (7) together proffers: (i) the formula for the calculation of the charges (or the rate) is not rigid, otherwise, there is no reason to give the commissioner of buildings the power to review the charges that have been determined by the developer; (ii) the use of the word 'sums' in sub-s (6), ie, 'Any proprietor who is not satisfied with the sums connotes there could be more than one rate of charges for maintenance charges or contribution to the sinking fund; (iii) the appointment of a registered property manager to recommend the sums payable as charges simply means there could be more than one way of tabulating what could be the expenses to be included and/or excluded in the total expenses which are relevant to determine the charges (the rate); and lastly, (iv) there should not be a rigid application of the formula. The determination of the charges (the rate) must be based on the principle of just and reasonable under the SMA 2013 and fair and justifiable under the SPA in [2024] 1 MLJ 948 at 968 this present case to determine the proportions with respect to different parcels' owners having regard to the rights of use of the common facilities of the parcels concerned in a mixed development.

...

[67] With regard to strata titled parcels in a subdivided building, if there are parcels within the subdivided building which are used for significantly different purposes, then the management corporation is empowered to impose different chargeable rates for parcels which are used for significantly different purposes. Likewise, if there are provisional blocks, the management corporation is empowered to impose different chargeable rates for the provisional blocks. It is to be noted that both the words 'parcels' and 'blocks' were used in plural form. This connotes that the law has envisaged a situation like the instant case, where a building is subdivided into parcels with separate strata titles, and the parcels are used for more than one type of purposes, such as parcels for residential purpose and parcels for commercial purpose within single development, then the management corporation is permitted in law to charge different rates for parcels that are used for significantly different purposes.

[68] Insofar as the formula to determine the rate of charges is concerned, it is the total expenses (or estimated expenses) divided by the total allocated share units (as explained earlier). The share units could be determined by a SiFUS or through the formula as provided in the First Schedule (s 8 of the SMA 2013).

See also *Yong Kein Sin & Anor v Perbadanan Pengurusan Springtide Residences and other appeals* [2025] MLJU 1469.

[37] We are mindful that the appellant heavily relies on the *Pearl Suria*'s case in support of its proposition to convince us. However, and whilst we agree with the findings made by this court in *Pearl Suria*'s case, there is the obvious difference between Pearl Suria and PD1 complex. The former is a mixed commercial cum residential development but the latter is solely a commercial development. In this respect, we can appreciate that Pearl Suria has a distinct and different residential block and commercial block that required separate common property maintenance expenditure; thus, justifying the invocation of s 60(3) of the SMA because the parcels of the development are used significantly for different purposes. Hence, the *Pearl Suria*'s case is distinguishable here because it is not in dispute that all the parcels in this PD1 complex are commercial only which warrants sharing from a sole common property maintenance expenditure.

[38] Be that as it may, we have nonetheless scrutinised the appellant's computation in its attempt to justify that the different parcels in PD1 complex need the incurrence of different common property maintenance expenditure. We however find that the computation using the direct cost allocation methodology is hypothetical as well as arbitrary. This has been done principally based on the differences in size of the office, shop and carpark parcels in the PD1 complex. The computation has not however been cogently done based on the actual maintenance costs of the common property reasonably required by the office, shop and carpark parcels respectively for their differing usage over

A the preceding years. Moreover, we find that the appellant's reliance on s 65 of the SMA further justify its stance is untenable because there is no subsidiary management corporation formed for this PD1 complex.

B **[39]** That notwithstanding and albeit the appellant has alluded to the fact that the appellant is not contesting the share units of the PD1 complex carpark parcel bays allocated by the Director of Lands and Mines of Selangor, we nonetheless find that the appellant's computation is, in fact, a collateral attempt by the appellant to redress the inequities of the share units that have been allocated by the Director of Lands and Mines of Selangor in respect of the PD1 complex.

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[40] This collateral nature of the appellant's defence to the respondent's action is, in our view, unsustainable based on the principles enunciated in *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393 (FC).

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[41] We are aware that the allocation of share units of the PD1 complex has been done between 2010–2012 before the enactment and implementation of the SMA. The allocation of share units is now governed by s 8 of the SMA wherein the First Schedule thereto provides an equitable and transparent formula to allocate share units. There were only guidelines for proposing share units to be assigned to a parcel in an application for sub-division of buildings into parcels contained in the *Buku Panduan Permohonan Hakmilik Strata: Akta Hakmilik Strata 1985* ('KPTG guidelines') issued by the Land and Mines Director General at that material time. However, it is unclear to us from the evidence adduced by the parties whether the share units allocated by the Director of Lands and Mines of Selangor complied with the KPTG guidelines.

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[42] In this regard, we agree with the learned High Court judge of the High Court below that the circumstances herein cannot warrant the issuance of an order for the re-allocation of the share units for the carpark parcels particularly because the Director of Lands and Mines of Selangor ought to be but was not given the right to be heard. More pertinently, the learned High Court judge held that the appropriate remedy must be way of judicial review to impugn the share units of the parcels in PD1 complex. We are mindful that the appellant may now be late in so doing but O 53 r 7 of the Rules of Court 2012 does provide for an extension of time to do so in an appropriate circumstance.

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[43] In the premises, we are not convinced that there was any appealable error on the part of the High Court judge that justifies appellate intervention.

CONCLUSION

[44] The appeal is thus dismissed and the decision is affirmed. The appellant shall pay costs of RM40,000 to the respondent subject to allocator.

Appeal dismissed.

Reported by Nabilah Syahida Abdullah Salleh